Pitfalls when using UCP for SBLCs

- 1 Comparing UCP with ISP for SBLCs: general
- 2 Issues common to SBLC and settled by ISP but not by UCP. Weak points of UCP
- 3 Conclusion

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1. Comparison UCP with ISP98 for SBLC: general

- Basic principles about autonomy, rights and obligations of parties etc. are quite similar for both rules ☺

- UCP are in plain English, ISP is drafted by USA lawyers

- UCP were drafted for commercial trade while ISP covers broad range of commercial and financial transactions/ obligations => half of articles in UCP are irrelevant, certainly for "financial" SBLC

- UCP are worldwide accepted and well known while ISP is more Anglo-saxon (although their use is spreading in Asia and EU…)

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1. Comparison UCP with ISP98 for SBLC : general

SBLCs, even when covering trade, are by their nature "financial guarantees/ obligations" for which the relevancy of commercial documents is anyway much lower than under L/C where the documents represent the goods. Besides, commercial documents produced for trade covered by SBLC are not drafted keeping in mind they will be ever have to be presented under the SBLC => more likely to be discrepant under UCP than ISP

ISP are more detailed than UCP (which are silent or vague for some aspects which arise regularly under SBLC)

2. Issues common to SBLC and settled by ISP but not by UCP

- Automatic extensions ("evergreens", very common under SBLC) : ISP 2.06 gives full guidance

- Not operative issuance : is possible, see ISP 2.03

- What if presented documents can not be identified? : ISP 3.03

- How to handle "Extend or pay"?=> ISP 3.09

- Checking of incomplete presentation: ISP 3.02 & 3.11 a

- What if original SBLC is lost or mutilated but needs to presented under SBLC? =>ISP 3.12

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2. Issues common to SBLC and settled by ISP but not by UCP

- Documents required to be signed by applicant: ISP 4.10

- Responsibility to the applicant for checking identity of presenter or assignee: ISP 4.13

- Formal requirements of Legal or Judicial documents: ISP 4.19

- Merger etc or change of name of Issuer : ISP 4.14

- UCP is very detailed about some types of "commercial" documents but vague with financial or less common documents which are regularly required under SBLC: UCP 14 f "documents as presented if its contents appear to fulfill the function"...=? While ISP gives more guidance : 4.16 till 4.19

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2. Issues common to SBLC and settled by ISP but not by UCP

- Cover letter instructions: ISP 5.08

- Applicant's notice of objection : ISP 5.09

- Transfer, assignment and transfer by operation of law : much more elaborated under ISP : ISP 6 settles many issues and different types of transfer, assignment, acknowledgment etc. while UCP is limited to trading by middlemen (art 38) and assignment of proceeds (39)

- Cancellation: ISP 7

- Syndication / participation: ISP 10

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2. Weak points of UCP vs ISP for SBLC

- Transport documents: 12 articles of UCP= not relevant or even "against" the function of a SBLC (certainly financial SBLC). E.g. by default the transport document must be original…(*But this can be solved by requiring photocopy*).

- Instalments (if relevant): UCP 32 can be dangerous! If relevant, art 32 should be excluded

- The UCP rules on Non-documentary conditions and Conflicting data (UCP 14 h resp. d) might be too harsh for the functioning of a SBLC

- If "Partial drawings are prohibited": UCP 31 is OK for shipment of goods but often inapproriate for SBLC

2. Weak points of UCP vs ISP for SBLC

Force Majeure clause in ISP is more in favour of beneficiary than in UCP and correspondents more with the spirit of BGs. URDG 758 has aligned with ISP and not with UCP

3. Conclusion

- Although UCP and ISP are similar for 80% the use of ISP could be recommended for SBLC, certainly for "financial" SBLC

- Hurdle is the need for training on ISP but lack of time & resources…

- ISP is in some aspects more in favor of the beneficiary, UCP more for the applicant

- As beneficiary: pay attention to several pitfalls➔ change UCP into ISP or, if not possible, try to have certain UCP articles excluded